

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:98-cr-081
Also 3:10-cv-153

-vs-

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

:

KEITH W. DEWITT,

Defendant.

ORDER DISSOLVING STAY AND ORDERING ANSWER

On May 11, 2010, this Court stayed further proceedings in this § 2255 matter pending decision by the United States Court of Appeals on Defendant's direct appeal. That Court has now rendered its decision affirming Judge Rice's denial of reduction of sentence. *United States v. DeWitt*, Case No. 09-3645 (6th Cir. July 13, 2010). Accordingly, the stay pending appeal is dissolved.

It does not plainly appear from the face of the Amended Motion, the annexed exhibits, and the prior proceedings in the case that Defendant is not entitled to relief. Accordingly, it is hereby ORDERED that the United States Attorney shall, not later than August 12, 2010, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2255 Cases. Specifically, said answer shall respond to each allegation made in the Motion, raise any affirmative defenses available to the United States, and state whether Defendant has previously received an evidentiary hearing on any of the matters he now raises or whether he is entitled, in the Government's view, to an evidentiary hearing in this proceeding.

Defendant may, not later than twenty-one days after the Answer is filed, file and serve a reply or traverse to the Answer. If the Government files a motion to dismiss, Defendant's time to file a memorandum in opposition will likewise be twenty-one days from service, as provided in S. D. Ohio Civ. R. 7.2(a).

July 13, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge